ATTORNEYS FOR APPELLANT:

JENNIFER R. FITZWATER
DANIEL S. TOMSON
Wood Tuohy Gleason Mercer & Herrin
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

MARK R. GALLIHER
RAYANNA L. ALEXANDER
Doyle & Friedmeyer, P.C.
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JPMORGAN CHASE BANK, N.A., successor by merger with Bank One, N.A., Appellant-Plaintiff,	)	
vs.	)	No. 02A03-0611-CV-539
EVERHOME MORTGAGE COMPANY, Appellee-Defendant.	)	
RITA E. NICHOLSON f/k/a RITA E. CAMPBELL, Defendant.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Daniel G. Heath, Judge
Cause No. 02D01-0505-MF-262

May 17, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Plaintiff/Cross-Defendant JPMorgan Chase Bank, N.A., successor to Bank One, N.A. ("Chase Bank") appeals a partial summary judgment ruling in a consolidated action involving complaints by Chase Bank and Appellee-Plaintiff/Cross-Defendant EverHome Mortgage Company, successor to Nexstar Financial Corporation ("EverHome"), seeking to foreclose upon real estate purchased by Appellee-Defendant Rita Nicholson f/k/a Rita Campbell ("Nicholson"). We dismiss.

Issues

Chase Bank raises the sole issue of whether the trial court properly granted EverHome partial summary judgment assigning priority to its mortgage lien.

We raise a single issue sua sponte: whether this Court has jurisdiction over this purported appeal.

Facts and Procedural History

On March 28, 2001, Nicholson, who owned real estate located at 2045 Elyetta Street in Fort Wayne, Indiana, obtained a home equity line of credit from Bank One, predecessor to Chase Bank, in the original principal amount of $47,500.00. Bank One recorded its mortgage on April 6, 2001. On May 23, 2001, Nicholson obtained an additional mortgage loan from Bank One in the original principal amount of $69,700.00. Bank One recorded its mortgage on June 6, 2001.

On August 24, 2001, Nicholson obtained a mortgage loan from Nexstar Mortgage in the amount of $70,000.00. At the closing on August 24, 2001, Three Rivers Title Company, Inc., acting upon instructions from Bank One, tendered funds to reduce the two Bank One

mortgages to a zero balance. Bank One's mortgage lien recorded in June 2001 was released, but the earlier mortgage lien was not released. The home equity line of credit was not closed. Nexstar Mortgage recorded its mortgage on August 30, 2001.

On September 13, 2001, Nicholson obtained another home equity line of credit from Bank One in the original principal amount of $19,250.00. Bank One recorded its mortgage lien on September 24, 2001. Apparently, Nicholson obtained other funds by using the home equity line of credit issued in March of 2001, which remained open after the August 24, 2001 closing.

Nicholson became delinquent in her monthly payments to her creditors. On June 30, 2005, Chase Bank, as successor to Bank One, filed a foreclosure complaint in the Allen County Superior Court, naming Nexstar Financial Corporation and Nicholson as defendants. On July 19, 2005, EverHome, as the successor to Nexstar Financial Corporation, filed a foreclosure complaint in the Circuit Court of Allen County, naming Chase Bank and Nicholson as defendants. On September 23, 2005, the cases were consolidated for trial in the Allen County Superior Court.

On May 2, 2006, EverHome filed a motion for partial summary judgment, asserting that its mortgage lien was superior to that of Chase Bank. EverHome contended that the first two Chase Bank loans were paid off at the August 24, 2001 closing, but Chase Bank failed to properly release one lien in the office of the Recorder of Allen County. On June 28, 2006, EverHome filed its "Amended Motion for Summary Judgment," requesting summary judgment "as to all issues and all Defendants." (App. 183.) Chase Bank responded on June 30, 2006, contending that the 2001 home equity line of credit could not have been closed

absent the express request of Nicholson. On September 11, 2006, the trial court conducted a summary judgment hearing.

On October 16, 2006, the trial court granted partial summary judgment in favor of EverHome, based upon the equitable theories of implied contract and estoppel. On November 6, 2006, Chase Bank filed a Notice of Appeal.

Discussion and Decision

It is the duty of the Court of Appeals to determine whether it has jurisdiction before proceeding to determine the merits of any case. Montgomery, Zukerman, Davis, Inc. v. Chubb Group of Ins. Co., 698 N.E.2d 1251, 1252-53 (Ind. Ct. App. 1998), trans. denied. When the Court determines that it does not have jurisdiction, it shall dismiss the appeal. Id. at 1253.

A final appealable order or judgment is one that disposes of all of the issues as to all of the parties and puts an end to the particular case. Id. The sufficiency of a judgment is to be tested by its substance rather than its form. Id. The judgment must show distinctly, and not inferentially, that the matters litigated have been disposed of in favor of one of the parties and the rights of the parties have been finally adjudicated. Id. Even where the trial court's order lacks some of the details or formalities generally required in a judgment, the order is nevertheless a final appealable judgment where it disposes of all claims of all of the parties. Id.

Indiana Trial Rule 58 provides in pertinent part as follows:

> Entry of judgment. Subject to the provisions of Rule 54(B), upon a verdict of a jury, or upon a decision of the court, the court shall promptly prepare and sign the judgment, and the clerk shall thereupon enter the judgment in the

> Record of Judgments and Orders and note the entry of the judgment in the Chronological Case Summary and Judgment Docket.
>
> Indiana Trial Rule 54(B) provides in pertinent part as follows:
>
> A judgment as to one or more but fewer than all of the claims or parties is final when the court in writing expressly determines that there is no just reason for delay, and in writing expressly directs entry of judgment, and an appeal may be taken upon this or other issues resolved by the judgment; but in other cases a judgment, decision or order as to less than all the claims and parties is not final.

Here, the trial court concluded that EverHome held a lien superior to that of Chase Bank, but did not order foreclosure or determine the amount of Nicholson's liability, if any, to Chase Bank and EverHome. As such, the trial court disposed of fewer than all the claims. Because Chase Bank and EverHome have outstanding claims against Nicholson, and the in rem action is pending, the trial court's order is interlocutory, not final.

Moreover, the trial court did not, pursuant to T.R. 54(B), expressly determine that there was "no just reason for delay" and direct entry of judgment so that an appeal might be taken upon the issue resolved by its judgment. Chase Bank did not obtain discretionary certification of the interlocutory order so that it became a final appealable order, pursuant to Appellate Rule 14(B). Nor does Chase Bank claim it has an appeal as of right pursuant to Appellate Rule 14(A). See Daimler Chrysler Corp. v. Yeager, 838 N.E.2d 449, 450 (Ind. 2005) (holding that jurisdiction over interlocutory appeals may not be found outside Appellate Rule 14).

Because Chase Bank attempts to appeal an interlocutory order as a final judgment, without certification, the Court of Appeals is without jurisdiction to address the appeal. See

Anonymous Doctor A v. Sherrard, 783 N.E.2d 296, 298 (Ind. Ct. App. 2003), reh'g denied.

Accordingly, we dismiss the purported appeal.

Dismissed.

SHARPNACK, J., and MAY, J. concur.